

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TRI CITY CRAFTS ASSOCIATION,

Plaintiff,

v.

AREVA NP, INC,

Defendant.

NO. CV-06-5065-EFS

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
AND DENYING AS MOOT
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

BEFORE THE COURT, without oral argument, are Defendant AREVA NP, Inc.'s Motion for Summary Judgment (Ct. Rec. 23) and Plaintiff Tri-City Crafts Association's (TCCA) Motion for Summary Judgment (Ct. Rec. 29). Both parties ask the Court to determine, if the Court has the authority to do so, whether a grievance is arbitrable. After reviewing the submitted material and applicable case law, the Court is fully informed. The Court concludes the arbitrator is to determine whether the grievance is arbitrable; accordingly, Plaintiff's motion is granted in part and denied in part and Defendant's motion is denied as moot.

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1 **A. Factual Statement¹**

2 AREVA² and TCCA³ are parties to a collective bargaining agreement
3 (CBA).⁴ (Joint SOF ¶ 1.) The CBA contains a grievance and arbitration
4 procedure, Article 18.1, which provides:

5 [i]f a grievance involving the interpretation or application
6 of a provision of this Agreement is not resolved in Step 3 of
7 the grievance procedure, or by discussions pursuant to
paragraph 17.5, the Company or the Association may submit the
matter to an Arbitration Committee . . . for a decision.

8 (Joint SOF ¶ 3.)
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11 ¹ This background is based on the Joint Statement of Uncontroverted
12 Facts (Ct. Rec. 46).

13 ² AREVA NP has been the owner of the Horn Rapids Road facility
14 since March 19, 2001, when as Framatome ANP, Inc., it acquired the
15 facility as part of a stock purchase from Siemens Power Corp., the parent
16 company of Framatome ANP Richland, Inc. (Joint SOF ¶ 6.) From 1986 to
17 2001, the facility was owned by Siemens Power Corp. under various legal
18 names including Framatome ANP Richland, Inc. (Joint SOF ¶ 6.)

19 ³ TCCA represents a portion of the non-exempt employees at the Horn
20 Rapids Road facility in Richland. (Joint SOF ¶ 7.)

21 ⁴ Although the collective bargaining agreement is between the TCCA
22 and Framatome ANP, Inc., the employer changed its name to AREVA NP in
23 2006. (Joint SOF ¶ 2.) This change had no effect upon the collective
24 bargaining obligations of the parties to the collective bargaining
25 agreement. (Joint SOF ¶ 2.)
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1 AREVA and TCCA have a Labor Management process where the parties
2 meet regularly to discuss matters of concern to either party; the process
3 is designed to have open lines of communication. (Joint SOF ¶ 9.)
4 During 2004 and 2005, TCCA suggested that AREVA consider having a Paid
5 Time Off Bank (PTB). (Joint SOF ¶ 10.) The PTB was requested by TCCA to
6 allow employees to better manage their paid time off for personal
7 reasons. (Joint SOF ¶ 10.) Discussions surrounding this issue occurred
8 for a number of months. (Joint SOF ¶ 10.) AREVA saw the potential
9 advantage of the PTB for both parties, including providing employees with
10 a method of managing their time off, to reward employees who effectively
11 managed their time off and to provide a simple, consistent, and well-
12 defined method to administer personal time off in a cost effective
13 manner. (Joint SOF ¶¶ 10 & 11.) TCCA requested bargaining over the PTB
14 plan, but AREVA took the position that Articles VI and XII of the CBA
15 reserve to AREVA the right to make changes to AREVA's policies and the
16 employee benefits programs. (Joint SOF ¶ 12.) Accordingly, AREVA
17 discussed the PTB Guidelines with TCCA, but did not gain its consent,
18 prior to unilaterally instituting the PTB Guidelines effective March 1,
19 2006.⁵ (Joint SOF ¶§ 12 & 13.) The PTB Guidelines⁶ establish an hours

21 ⁵ The PTB Guidelines were implemented as a pilot program for
22 possible implementation corporate-wide and apply to all production and
23 maintenance employees at the Horn Rapids facility, both union and non-
24 union. (Joint SOF ¶ 14.) At the same time it implemented the PTB
25 Guidelines, the Company implemented a Short Term Disability policy.
26 (Joint SOF ¶ 17.) The Short Term Disability policy is governed by

1 bank for personal time off from work and set out the procedures for using
2 it. (Joint SOF ¶ 15.)

3 AREVA contends it has the ability under Articles VI and XII to
4 implement the PTB Guidelines without consent of TCCA or submission of the
5 grievance to arbitration. Article VI of the CBA provides:

6 ARTICLE VI - COMPANY POLICIES

7 6.1 Company policies, including the following, shall apply to
8 Employees during the term of this agreement:

Siemens Corporate Policy Number	Framatome ANP, Inc. Corporate Policy Number	Subject	Date Issued
8.1.1	0210	NonExempt Overtime	1/1/02
8.1.2	0218	Holidays	1/28/05
8.13	0230	Working Hours- Overtime Guidelines	1/1/02
9.1.4 and 8.2.5	0213	Attendance	9/15/04
8.2.2	0205	Employment Categories and Benefits/Compens ation Eligibility	4/12/05
8.3.1	0220	Educational Assistance Program	1/31/05
8.3.2	0228	Vacation	5/09/05

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24 Article XII of the CBA. (Joint SOF ¶ 17.)

25 ⁶ The parties are currently negotiating the terms of the PTB
26 Guidelines in negotiations for a new CBA. (Joint SOF ¶ 16.)

1 6.2 Company policies affecting Employees may be changed from
2 time to time by the Company during the term of this Agreement,
provided that:

3 Such changes are not inconsistent with the provisions of
4 this Agreement; and Such changes do not discriminate
against bargaining unit Employees as compared to other
employees.

5 6.3 In the event of an inconsistency between company policies,
whether in effects as of the effective date of this Agreement
6 or later adopted or changed, and the provisions of this
Agreement, the provisions of this Agreement shall govern.

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8 Later in the CBA, Article 12 provides:

9 12.1 This agreement does not affect the Company Benefit
Program, as it exists or may be expanded, modified or amended;
10 provided, however, that any changes in the Company Benefit
Program during the term of this Agreement will not discriminate
against Employees as compared to other employees.

11 12.2 The company Benefit Program includes the following plans:

- 12 a. Savings and Investment Plan.
- 13 b. Group Life Insurance Plan.
- 14 c. Disability Income Plans.
- 15 d. Retirement Plan.
- 16 e. Hospital Surgical, Medical Insurance.
- 17 f. Dental Assistance Plan.

18 12.3 The Company's interpretation and application of the
Company Benefit Program shall be final and binding and neither
they nor the substance of the Benefit Program shall be subject
19 to the arbitration procedure of this Agreement, except as to
the issue of discriminatory application between Employees and
the Company's other wage employees in Richland.

20 On March 21, 2006, TCCA filed a grievance over the implementation
of the PTB Guidelines, alleging a violation of Article 6.1. (Joint SOF
21 ¶ 19.) The parties processed the grievance, but AREVA repeatedly
22 declared that the grievance was not arbitrable and that it would not
submit the grievance to arbitration. (Joint SOF ¶ 20.) TCCA filed an
23 unfair labor practice charge with the National Labor Relations Board
24 (NLRB) on May 16, 2006. (Joint SOF ¶ 24.) The NLRB issued a Complaint
25 and Notice of Hearing before an administrative law judge. (Joint SOF ¶
26

24.) TCCA filed the current Complaint in federal court on August 24, 2006. (Joint SOF ¶ 25; Ct. Rec. 1.) A Board Hearing before an Administrative Law Judge was set for October 24, 2006. (Joint SOF ¶ 25.) The NLRB then withdrew the Complaint and Notice of Hearing and held the charge in abeyance. (Joint SOF ¶ 25.) TCCA has no knowledge of any damages which may have accrued because of the claimed breach of contract. (Joint SOF ¶ 26.) The reason TCCA pursued this grievance is because AREVA did not bargain over the PTB issue, so it is a question of process rather than economic impact. (Joint SOF ¶ 26.)

B. Summary Judgment Standard

Summary judgment is appropriate where the documentary evidence produced by the parties permits only one conclusion. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-252 (1986). The party seeking summary judgment must demonstrate there is an absence of disputed issues of material fact to be entitled to judgment as a matter of law. FED. R. CIV. PROC. 56(c). In other words, the moving party has the burden of showing no reasonable trier of fact could find other than for the moving party. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). "A material issue of fact is one that affects the outcome of the litigation and requires a trial to resolve the parties' differing versions of the truth." *Lynn v. Sheet Metal Worker's Intern. Ass'n*, 804 F.2d 1472, 1483 (9th Cir. 1986) (quoting *Admiralty Fund v. Hugh Johnson & Co.*, 677 F.2d 1301, 1306 (9th Cir. 1982)). The court is to view the facts and draw inferences in the manner most favorable to the non-moving party. *Anderson*, 477 U.S. at 255; *Chaffin v. United States*, 176 F.3d 1208, 1213 (9th Cir. 1999).

A burden is also on the party opposing summary judgment to provide

1 sufficient evidence supporting his claims to establish a genuine issue
2 of material fact for trial. *Anderson*, 477 U.S. at 252; *Chaffin*, 186 F.3d
3 at 1213. "[A] mere 'scintilla' of evidence will be insufficient to
4 defeat a properly supported motion for summary judgment; instead, the
5 nonmoving party must introduce some 'significant probative evidence
6 tending to support the complaint.'" *Fazio v. City & County of San*
7 *Francisco*, 125 F.3d 1328, 1331 (9th Cir. 1997) (quoting *Anderson*, 477
8 U.S. at 249, 252).

9 **C. Authority and Analysis**

10 TCCA filed this action seeking a court order requiring arbitration
11 of the PTB grievance on the grounds that (1) it is the arbitrator's role
12 to determine whether the grievance is arbitrable, or in the alternative
13 (2) the Court should determine arbitrability and then order AREVA to
14 submit the grievance to arbitration. In its own motion and in response
15 to TCCA's motion, AREVA asks the Court to conclude that the CBA does not
16 apply to the instant grievance given that AREVA retained the authority
17 to revise the company policies affecting benefit programs in Articles VI
18 and XII.

19 Section 301 of Labor Management Relations Act authorizes suits for
20 violations of collective bargaining agreements between an employer and
21 a labor organization. 29 U.S.C. § 185. The Supreme Court has analyzed
22 arbitration issues a number of times, including a series of cases known
23 as the *Steelworkers Trilogy*: *Steelworkers v. American Manufacturing Co.*,
24 363 U.S. 564 (1960); *Steelworkers v. Warrior & Gulf Navigation Co.*, 363
25 U.S. 574 (1960); and *Steelworkers v. Enterprise Wheel & Car Corp.*, 363
26 U.S. 593 (1960). The first principle from this *Trilogy* is "arbitration

1 is a matter of contract and a party cannot be required to submit to
2 arbitration any dispute which he has not agreed so to submit." *AT & T*
3 *Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 648 (1986)
4 (quoting *Warrior & Gulf Navigation*, 363 U.S. at 582). The second
5 principle is:

6 the question of arbitrability-whether a collective-bargaining
7 agreement creates a duty for the parties to arbitrate the
8 particular grievance-is undeniably an issue for judicial
9 determination. Unless the parties clearly and unmistakably
10 provide otherwise, the question of whether the parties agreed
11 to arbitrate is to be decided by the court, not the arbitrator.

12 *Id.* at 649. The third principle is, "in deciding whether the parties
13 have agreed to submit a particular grievance to arbitration, a court is
14 not to rule on the potential merits of the underlying claims." *Id.* In
15 the absence of relevant extrinsic evidence, matters of contract
16 interpretation are decided by the court as a matter of law. *Council of*
17 *Laborers v. Pittsburgh-Des Moines Steel*, 69 F.3d 1034, 1036 (9th Cir.
18 1995).

19 The parties agree they are subject to the CBA and that "[t]he
20 collective bargaining agreement states the rights and duties of the
21 parties." *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*,
22 363 U.S. 574, 578 (1960). Yet, the parties are unable to agree as to the
23 application of the second and third *Steelworker Trilogy* principles, *i.e.*
24 whether the instant dispute is subject to the terms of the CBA, and
25 initially whether it is the Court's or arbitrator's role to determine
26 whether the CBA does apply to the dispute.

As set forth above, the second prong of the *Steelworkers Trilogy*
provides that a court is divested of the authority to determine whether

1 the agreement requires the dispute to be subject to arbitration if the
2 parties "clearly and unmistakably provide" that an arbitrator is to
3 decide whether the dispute is subject to arbitration. *S. Cal. Dist.*
4 *Council of Laborers v. Berry Const, Inc.*, 984 F.2d 340, 344 (9th Cir.
5 1993) (quoting *AT & T Techs.*, 475 U.S. at 649). The Ninth Circuit has:

6 acknowledged that the CBA explicitly may grant this authority
7 to the arbitrator. But we have also held that the power to
8 determine arbitrability may be granted [to the arbitrator]
9 through the use of a broad arbitration clause. For example,
10 in *Brotherhood of Teamsters & Auto Truck Drivers Local No. 70*
11 *v. Interstate Distributor Co.*, 832 F.2d 507 (9th Cir. 1987),
12 we held that an arbitration clause governing "any grievance or
13 controversy affecting the mutual relations" of the parties
14 empowered the arbitrator to decide whether the CBA had been
terminated. Conversely, we have held that an arbitration
clause which applied only to disputes over "application" of the
CBA was limited to disputes over the construction of
substantive provisions of the agreement, and did not empower
an arbitrator to decide whether the factual question of whether
the agreement had been terminated. *Northern California*
Newspaper Guild Local 52 v. Sacramento Union, 856 F.2d 1381,
1383 (9th Cir. 1988).

15 *S. Cal. Dist. Council of Laborers*, 984 F.2d at 344 (underlining added).

16 Here, CBA ¶ 18.1 provides:

17 If a grievance involving the interpretation or application of
18 a provision of this Agreement is not resolved in Step 3 of the
19 grievance procedure, or by discussions pursuant to paragraph
17.5, the Company or the Association may submit the matter to
an Arbitration Committee (as described below) for a decision.

20 The Court concludes the parties selected broad arbitration language and
21 finds ¶ 18.1 provides the arbitrator with the authority to determine
22 whether the PTB dispute is subject to arbitration. See *S. Cal. Dist.*
23 *Council of Laborers*, 984 F.2d at 341 & 344 (finding that arbitrator was
24 given the authority to determine arbitrability of dispute by broad
25 language: "all grievances or disputes arising between [the parties] over
26 the interpretation or application of the terms of this Agreement shall

1 be settled by the procedures set forth in Article VI."); *United Bhd. of*
2 *Carpenters & Joiners of Am., Local No. 1780 v. Desert Palace, Inc.*, 94
3 F.3d 1308, 1310-11 (9th Cir. 1996) ("A broad arbitration clause-even one
4 that does not specifically mention who decides arbitrability-is
5 sufficient to grant the arbitrator authority to decide his or her own
6 jurisdiction."). Accordingly, although "[i]t is [generally] the court's
7 duty to interpret the agreement and to determine whether the parties
8 intended to arbitrate grievances . . . ," *AT & T Techs.*, 475 U.S. at
9 651, the Court finds the parties selected to have an arbitrator, not a
10 court, determine whether a particular issue is arbitrable. Therefore,
11 an arbitrator is to determine whether or not the PTB grievance is
12 arbitrable. Lastly, the Court declines to award TCCA attorneys fees.

13 For the above given reasons, **IT IS HEREBY ORDERED:**

14 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 29**) is **GRANTED**
15 **IN PART** (an arbitrator is to determine whether or not the PTB grievance
16 is arbitrable) **and DENIED IN PART** (attorneys fees request denied).

17 2. Defendant's Motion for Summary Judgment (**Ct. Rec. 23**) is **DENIED**
18 **AS MOOT.**

19 **IT IS SO ORDERED.** The District Court Executive is directed to

20 (A) Enter this Order,

21 (B) Provide copies to all counsel,

22 (C) Prepare and enter **JUDGMENT** (an arbitrator is to determine
23 whether or not the PTB grievance is arbitrable), and

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1 (D) **CLOSE THIS FILE**, subject to reopening if necessary due to
2 arbitrator's decision.

3 **DATED** this 14th day of August 2007.

4
5 s/ Edward F. Shea
6 EDWARD F. SHEA
7 United States District Judge

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